

STATE OF MAINE
KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-

STATE OF MAINE and)
SECURITIES ADMINISTRATOR,)
)
Plaintiffs,)
)
v.)
)
KRISTOPHER T. SAUNDERS,)
)
Defendant.)

COMPLAINT

INTRODUCTION

1. The State of Maine and Securities Administrator (hereinafter collectively referred to as “the State”) bring this action against Kristopher T. Saunders (“Saunders”) for violations of the Revised Maine Securities Act, 32 M.R.S.A. §§ 10101-10713 (1999 and Supp. 2002) (“the Act”), in that Saunders: (a) offered and sold securities in Maine without a license; (b) offered and sold securities in Maine that were not registered; and, (c) in selling the unregistered securities, Saunders made untrue statements and omitted material facts that would have been necessary to include in order to make statements made by him not misleading.

JURISDICTION

2. This Court has jurisdiction pursuant to 4 M.R.S.A. § 105 (Supp. 2002) and 32 M.R.S.A. §§ 10602-10603 (1999 and Supp. 2002).

PARTIES

3. Plaintiff State of Maine is a sovereign state. Plaintiff Securities Administrator, who has offices in Gardiner in Kennebec County, Maine, is responsible for enforcing the Act. Plaintiffs bring this action by and through the Attorney General pursuant to 32 M.R.S.A. §§ 10602(1)(D) and the powers vested in him by 5 M.R.S.A. § 191 (2002) and the common law as the State's chief law enforcement officer.

4. Saunders is an adult individual residing at [REDACTED]
[REDACTED]

STATUTORY BACKGROUND

5. The Revised Maine Securities Act regulates persons who offer, sell, or purchase securities in the State of Maine. The Act defines securities to include any investment contract, stock, or warrant to purchase stock. 32 M.R.S.A. § 10501(18) (Supp. 2002).

6. The Act prohibits the offer or sale of securities that are not registered in Maine unless the security or the transaction is exempt from registration. 32 M.R.S.A. § 10401 (1999).

7. The Act further prohibits any person from transacting business in Maine as a broker-dealer or sales representative unless licensed or exempt from licensing. 32 M.R.S.A. § 10301(1) (1999). The Act defines "broker-dealer" as an individual or entity who engages in the business of effecting transactions in securities. 32 M.R.S.A. § 10501(1) (1999). The definition of "sales representative" under the Act includes a person acting for a broker-dealer in effecting transactions in securities. 32 M.R.S.A. § 10501(16) (1999).

8. Under the Act, a person shall not, in connection with the offer, sale, or purchase of any security, directly or indirectly: (a) employ any device, scheme, or artifice to defraud; (b) make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading; or (c) engage in any act, practice, or course of business that operates as a fraud or deceit upon any person. 32 M.R.S.A. § 10201 (1999).

9. The Securities Administrator may refer violations of the Act to the Attorney General for enforcement, and the Attorney General may initiate a civil action in the Superior Court. 32 M.R.S.A. § 10602(1)(D) (1999).

10. In an enforcement action under the Act, the Court may grant a variety of legal and equitable remedies, including injunctions, civil penalties, restitution to investors and disgorgement. 32 M.R.S.A. § 10603(1) (1999).

**GENERAL ALLEGATIONS APPLICABLE
TO ALL COUNTS OF THE COMPLAINT**

11. On April 14, 2000, Saunders met with representatives of the Office of Securities (“Securities”) at its offices. During the meeting, Saunders informed the representatives that he intended to pool money from other investors to purchase stock in a company known as Edulink. Saunders also informed the representatives that he had found persons who were interested in investing in Edulink through Raging Bull, a public Internet website for investors. The Securities representatives discussed with Saunders a number of different options for raising money in compliance with the Revised Maine Securities Act, including through the private placement exemption to the Act’s

registration requirement. However, they informed Saunders that he could not lawfully use money raised as a result of his public solicitations on the Raging Bull web site if he proceeded with a private placement. At the conclusion of the meeting Saunders told the representatives that he would seek legal counsel in order to structure his plan to raise capital to purchase shares of Edulink in compliance with the law.

12. In the weeks following the meeting with Securities, Saunders made several postings to the Raging Bull site under his screen name “ThePURPLE.” In the postings, Saunders solicited investors to participate in a scheme under which Saunders would receive funds from the investors and then use the pooled funds to purchase Edulink stock.

13. Saunders retained the services of Peter Sang, Esquire, to provide advice concerning the proposed investment in Edulink and the group structure, and Sang subsequently drafted a joint venture agreement. Sang informed Saunders in June of 2000 that Sang is a tax attorney and was not providing any advice regarding compliance with securities laws.

14. The transactions between Saunders and the investors, as described in the postings and as ultimately executed, legally constitute the sale of investment contracts by Saunders to each investor under the well-established *Howey* test. *See SEC v. W.J. Howey Co.*, 328 U.S. 293, 298-99 (1946). Investment contracts, like stock, are securities under the Act.

15. Saunders’ postings included the following untrue statements:

- a. Saunders would distribute shares to investors one year after the date of purchase;

- b. An investment in Edulink through Saunders would allow investors to avoid paying taxes on the investment;
- c. The investment would return a 300% profit;
- d. Saunders had consulted with Securities and private attorneys, including securities attorneys, and confirmed that the investment would be made in compliance with the law;
- e. Saunders would refund the purchase price to all investors if the scheme violated any regulatory requirements; and
- f. Saunders would not receive compensation for effecting the transaction.

16. Saunders omitted the following material information, disclosure of which would have been necessary to make other representations by Saunders not misleading:

- a. Securities had informed Saunders that he could not lawfully raise money for purposes of his Edulink investment scheme from individuals he solicited on the Raging Bull site; and
- b. The attorney who drafted the agreement that set forth the structure of the scheme had advised Saunders that the attorney is not a securities attorney and could not offer any advice to Saunders or his group on whether the scheme complied with securities laws.

17. Between July 14, 2000, and September 7, 2000, Saunders received a total of \$107,700 from eighteen investors for the purpose of purchasing the Edulink securities.

18. On July 25, 2000, using funds received from the investors, Saunders purchased 1,500,000 shares of Edulink common stock for an aggregate price of \$75,000.

On September 2, 2000, using funds received from the investors, Saunders purchased an additional 500,000 shares for an aggregate price of \$25,000.

19. After paying attorneys fees, Saunders retained the remaining money received from investors for his personal use.

20. At no time was Saunders licensed by the State of Maine as a securities broker-dealer or sales representative or exempt from the licensing requirement.

21. At no time were the investment contracts sold by Saunders registered with the State of Maine or exempt from the registration requirement.

COUNT I

(Transaction of Business Without a License)

22. The State repeats and realleges paragraphs 1 through 21 as if set forth fully herein.

23. By effecting the Edulink transactions, Saunders violated the prohibition in 32 M.R.S.A. § 10301 against transacting business in Maine as a broker-dealer or sales representative unless licensed or exempt from licensing.

COUNT II

(Sale of Unregistered Securities)

24. The State repeats and realleges paragraphs 1 through 23 as if set forth fully herein.

25. By offering for sale and selling the Edulink investment contracts, Saunders violated the prohibition in 32 M.R.S.A. § 10401 against offering or selling unregistered securities in Maine.

COUNT III
(Fraudulent and Deceptive Practices)

26. The State repeats and realleges paragraphs 1 through 25 as if set forth fully herein.

27. By making untrue statements of material fact and omitting to state material facts necessary to make the statements made, in light of the circumstances under which they were made, not misleading, in connection with the offer and sale of securities, Saunders violated 32 M.R.S.A. § 10201(2).

REQUEST FOR RELIEF

WHEREFORE, the State requests that this Honorable Court grant the following relief:

1. An injunction prohibiting Saunders from offering or selling unregistered securities in the State of Maine or transacting business as a broker-dealer or sales representative in the State of Maine unless licensed;
2. An order requiring Saunders to make full restitution by returning all monies to the investors together with any commissions, fees, penalties, and interest;
3. An order requiring Saunders to account for all monies received by him from or on behalf of the investors;
4. An order, as necessary, appointing a receiver or conservator for Saunders' assets so that appropriate restitution may be made;
5. An order requiring Saunders to disgorge all profits from the unlawful transactions described in this Complaint; and

6. Such other and further relief as this Court deems appropriate.

DATED: April 17, 2003

Respectfully submitted,

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